IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 16 of 1987

WITH

WEALTH TAX REREFERENCE NO.47 OF 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF WEALTH TAX

Versus

D S VIRAWALA SURAGWALA

Appearance:

MR B.B. NAIK, Sr. Standing Counsel for the Revenue

MR B.D. KARIA WITH MR RK PATEL, Advocates for the Assessee

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 17/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. These two references raise common questions in the case of the same assessee for different assessment years on the aspect as to whether the assessee was entitled to exemption under section 5(1)(iii) of the Wealth Tax Act, 1957 in respect of the new building constructed in place of the old recognised palace.

2. For the Assessment Years 1977-78, the assessee had declared the net wealth of Rs.11,12,243=00 on 1st July 1977. The return was filed in the capacity of individual. During the proceedings, the assessment was made in the status of `HUF', as requested by the assessee. According to the assessee, he had succeeded to the Gaddi of the former State of Vadia on the death of his father. According to him, he was in possession of a palace at Vadia which was exempted for taxation purposes under the notification issued under Part `B' State (Taxation Concession) Order, 1950. The said palace was declared as the official residence of the Ex-Ruler of Vadia. It was demolished in the previous year relevant to the Income Tax Assessment Year 1973-74 and the scrap was partly sold and partly utilised for construction of a new building. The assessee claimed the capital loss of Rs.56,518=00 in respect of old palace. The value of the newly constructed building at the place where the palace earlier stood was shown as Rs.1,57,280=00. The assessee claimed exemption under section 5(1)(iii) of the said Act in addition to the exemption claimed, in respect of his flat at Bombay under section 5(1)(iv) of the said Act. The Wealth Tax Officer, Rajkot, by the order dated 13th March 1982, held that since, in the instant case, the old palace was dismantled and a new building had been constructed in its place, the new building cannot be regarded as the palace mentioned in the notification, and therefore, the exemption under section 5(1)(iii) of the Act was not available to the assessee.

2.1 The return for the Assessment Year 1978-79 was filed on 30th June 1978 by the assessee in the status of `HUF'. For the reasons stated in the assessment order for the year 1977-78, the Wealth Tax Officer, by the

order dated 4th March 1983, rejected the assessee's claim for exemption under section 5(1)(iii) of the said Act. Similar order was made on 12-1-1984 by the Wealth Tax Officer in respect of the assessee's claim filed in the status of `HUF' for the Assessment Year 1979-80.

2.2 Against the order of the Wealth Tax Officer dated 13th March 1982 made for the Assessment Year 1977-78, the assessee had preferred an appeal raising the ground that the Wealth Tax Officer had erred in not granting exemption in respect of the building constructed on the same land on which the palace was demolished. The Appellate Assistant Commissioner of Wealth Tax, by the order dated 5th May 1984, construing the provisions of section 5(1)(iii) of the said Act, held that the exemption was given to a building which was the official residence of the assessee, and that such exemption was enjoyed by the assessee upto the Assessment Year 1972-73 and therefore, the exemption was available to the assessee even when he demolished the dilapidated palace and constructed a new building at the same place. The addition of Rs.1,57,280=00 made by the Wealth Tax Officer was, therefore, deleted. Similar orders were made by the appellate authority on the appeals filed for the Assessment Years 1978-79 and 1979-80 on 3-7-1984 and 20-12-1985 respectively.

3. The matter was carried to the Appellate Tribunal by the Wealth Tax Officer in respect of these years and the Tribunal, taking note of the fact that, in para 13 of the Merged States (Taxation Concession) Order, 1949, exemption was granted from income and super tax in respect of bonafide annual value of the residential palaces of a Ruler of Indian State which was declared by the Central Government as the official residence of the Ruler and likewise para 15 of Part `B' States (Taxation Concession) Order, 1950 also granted that exemption, held that, having regard to the expression `any one building in the occupation of the Ruler' occurring in section 5(1)(iii) of the said Act and to the fact that there was no dispute as to the building having been in the occupation of the Ex-Ruler, there was no reason why exemption granted earlier cannot be availed of by the assessee. All the appeals were, therefore, dismissed.

4. The Tribunal has, in the aforesaid background, referred the following questions for the opinion of this Court under section 27 of the Wealth Tax Act, 1956, in Wealth Tax Reference No.16 of 1987 :

"[1] Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to exemption under section 5(1)(iii) of the Wealth Tax Act, 1957, in respect of new building constructed by him in place of the old recognised palace?

[2] Whether, on the facts and circumstances of the case, the Tribunal was right in law in coming to the conclusion that the exemption was available to a building used as an official residence irrespective of the fact whether it was old or newly constructed? "

4.1 In Wealth Tax Reference No. 47 of 1987 which relates to the Assessment Year 1980-81, in the same factual background, the Tribunal has referred the following question for the opinion of this Court :

"Whether, in law and on facts, the assessee is entitled to exemption under section 5(1)(iii) of the Wealth Tax Act, 1957 in respect of the palace which was demolished and a new building has been constructed ?"

5. The learned Standing Counsel appearing for the Revenue contended that the basic requirement of section 5(1)(iii) of the Act was that a building should be in the occupation of the Ruler, and that it should have been declared as the official residence of the Ruler under para 15 of Part `B' States (Taxation Concession) Order, 1950. It was submitted that, in this case, admittedly the declared building was demolished in the year 1973-74 and a new one was constructed in the year 1974-75. Therefore, the building in respect of which benefit of section 5(1)(iii) of the Act was intended, did not exist and no exemption could be granted for a new building which was not declared as the official residence. It was also submitted that the Tribunal had not considered as to whether the assessee was a person eligible to make a claim under section 5(1)(iii) of the Act for exemption.

5.1 In support of his contentions, the learned Senior Standing Counsel for the Revenue relied upon the following decisions :-

[a] Decision of the Alhabad High Court in H.H. Maharaja Vibhuti Narain Singh v. Commissioner of Wealth Tax, U.P., reported in 78 ITR 714, in which it was held in context of the provisions of section 5(1)(iii) of the said Act that, under the said provisions, the Ruler of an Indian State was entitled to exemption from tax in respect of only one building which the Central Government has declared as his official residence under para 13 of the Merged States (Taxation Concession) Order, 1949. In that case, the Wealth Tax Officer had already granted exemption in regard to the Ramnagar Palace as the official residence of the assessee and included the value of Nandeswar Palace in his net wealth. It was held that the assessee was not entitled to exemption from tax in regard to the value of Nandeswar Palace under any provision of the Wealth Tax Act.

[b] Decision of the Supreme Court in Revathinnal Balagopala Varma v. His Highness Shri Padmanabha Dasa, reported in 1993 Supp. (1) SCC 233, was cited for the proposition that, one incidence of property held by a sovereign was that there was really no distinction between the public or State properties on the one hand and private properties of the sovereign on the other, and the other incidence was that no one could be a co-owner with the sovereign in the properties held by him, and that the whole of it belongs to him as sovereign.

[c] Decision of the Supreme Court in Gaj Singh v. Settlement Commission, reported in 247 ITR 586 was cited to point out that, where the assessee, an Ex-Ruler of an Indian State, had opted to adopt the Umed Bhavan Palace as his house for the purposes of exemption under section 5(1)(iii) of the Wealth tax Act, 1957, it was held that he could not seek exemption for another house, namely, Sardar Samand Palace under clause (iv) of section 5.

[d] Decision of the Supreme Court in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur v. Union of India, reported in AIR 1971 SC 530 was cited for the proposition that, in recognising or de-recognising a person as a Ruler, the President does not exercise any political power, but he exercises only an executive function.

6. The learned counsel appearing for the assessee supported the decision of the Tribunal and contended that the assessee was entitled to the benefit of section 5(1)(iii) of the said Act in respect of any building which was used as official residence. It was submitted that the emphasis was on providing residence to the Ex-Ruler and his successors and therefore, merely because the earlier building which was dilapidated, had been pulled down and a new building was constructed at the same site, it cannot be said that the benefit of section 5(1)(iii) ceases to operate. It was also submitted that the HUF of the Ruler or his successor can file returns under the said Act and all that was required to be ascertained was, whether the property in question fell within the description of section 5(1)(iii) of the said Act, and it makes no difference whether the assessment was made in the hands of the Ruler or his successor as an assessee or in the hands of the HUF of such Ruler or the successor, as the case may be.

6.1 The learned counsel for the assessee, in support of his submissions, referred to the decision of the M.P. High Court in H.H. Raja Agit Singh of Jhabua v. Commissioner of Income Tax, M.P.- I, reported in 140 ITR 138, in which, in context of the provisions of Clause (19A) of section 10 of the Income Tax Act, 1961, the Court held that, by the said clause, the earlier exemption granted to the erstwhile Rulers in respect of the annual value of the palaces was withdrawn and the annual value of only one of the palaces in the occupation of the Ruler was exempted from income tax with effect from December 28, 1971, and therefore, the Tribunal was not justified in holding that the annual value of the palace was also taxable under clause (19A) of section 10 from April 1, 1971 to December 28, 1971, though the said clause was deemed to have been inserted with effect from December 28, 1971.

7. The undisputed facts are that, the palace of the erstwhile Ruler of Vadia was notified at item 60 of the notification dated 14th May 1954 issued by the Government of India, Ministry of Finance (Revenue Division) and published in the Gazette of India, Part II, Section 3, dated 14th May 1954, pursuant to the provision of item (iii) of para 15 of the Part `B' States (Taxation Concessions) Order, 1950, and declared as the official residence of the Ruler of the said former Indian State. The said Taxation Concession Order, 1950 was issued under section 60A of the Indian Income Tax Act, 1922 and the exemptions from income tax and super tax enumerated in

clause 15 included in sub-clause (iii) "The bona fide annual value of the residential palace of the Ruler of a State which is situate within the State and is declared by the Central Government as his inalienable ancestral property".

8. The assessee claims exemption under section 5(1)(iii) of the said Act, which reads as under :-

Exemption in respect of certain assets.

5. (1) Subject to the provisions of sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee -

(i) xxxxx

(ii) xxxxx

(iii) any one building in the occupation of a Ruler, being a building which immediately before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was his official residence by virtue of a declaration by the Central Government under paragraph 13 of the Merged States (Taxation Concessions) Order, 1949, or paragraph 15 of the Part `B' States (Taxation Concessions) Order, 1950;

(iv) xxxxx

8.1 Section 2(p) of the said Act defines `Ruler' so as to mean a Ruler as defined in clause (22) of Article 366 of the Constitution. Under Article 366 (22) as per the definition of `Ruler' as substituted by Constitution (Twenty-sixth Amendment) Act, 1971, " `Ruler' means the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler". Under Article 363A which was

inserted by the Constitution (Twenty-sixth Amendment), 1971, it was provided that any person recognised by the President as Ruler or Successor of such Ruler before the commencement of the said Amendment Act, shall, on and from such commencement, cease to be recognised as such Ruler or the successor of such Ruler. It would, therefore, follow that, for enabling the assessee to claim exemption under section 5(1)(iii) read with the definition of `Ruler' in section 2(p) of the Act, by not including in the net wealth of the assessee one building in the occupation of a Ruler which before the said Constitution Amendment Act, 1971 was his official residence, such Ruler should have been recognised by the President as the Ruler of an Indian State or the successor of such Ruler should have been so recognised at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971.

8.2 The Constitution (Twenty-sixth Amendment) Act, 1971 received assent of the President on 28-12-1971 and by that Act, Articles 291 and 362 of the Constitution were omitted and a new Article 363A was inserted. Under Article 363A(a), notwithstanding anything in the Constitution or in any law for the time being in force, the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement was recognised by the President as the successor of such Ruler shall, on and from such commencement, cease to be recognised as such Ruler or the successor of such Ruler.

8.3 Under Article 362, which came to be omitted by the said Amendment, it was earlier provided that, in the exercise of powers of Parliament or of the Legislature of a State to make laws or in the exercise of the executive powers of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as was referred to in Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.

8.4 Consequent to de-recognition of Rulers of Indian States and abolition of privy purse, in order to enable the Rulers to adjust progressively to the changed circumstances, the Parliament enacted the Rulers of Indian States (Abolition of Privilege) Act, 1972 with a view to amend certain enactments, including the Wealth Tax Act. In the Wealth Tax Act, 1957, in clause (iii) of section 5 in sub-clause (1) for the words "any one

building in the occupation of a Ruler declared by the Central Government as his official residence", the words brackets and figures "any one building in the occupation of a Ruler, being a building which immediately before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971 was his official residence by virtue of a declaration by the Central Government", were substituted with effect from 28th day of December 1971. The said Act of 1972 also made an amendment in section 10(19A) of the Indian Income Tax Act, 1961, which contain a similar exemption from income tax.

8.5 Thus, the overall effect of the Twenty-sixth Amendment on the definition of `Ruler' which has been adopted under section 2(p) of the Wealth Tax Act, 1957, and of the aforesaid amendment made by The Rulers of Indian States (Abolition of Privileges) Act in section 5(1)(iii) of the said Act, was that the exemption in respect of any one building could be given only to a Ruler who was recognised by the President as the Ruler or to any person who was recognised by the President as the successor of such Ruler before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, if it was his official residence by virtue of the declaration made under para 15 of the Part `B' States (Taxation Concessions) Order, 1950.

9. As noted above, the official palace of the Ruler of Vadia was notified under para 15 of the Part `B' States (Taxation Concessions) Order, 1950 and therefore, the benefit under section 5(1)(iii) of the said Act was available in respect of that palace. However, since the palace was demolished in 1973-74 and a building has been re-constructed on the same site, the question has arisen as to whether the benefit of exemption under section 5(1)(iii) of the said Act would enure in respect of the said newly constructed building. The official building of the Ruler or the successor recognised prior to the commencement of the Constitution (Twenty-sixty Amendment) Act, 1971 was exempted from the net wealth of the assessee with a view to provide some relief to such recognised Ruler or successor, as a transitional provision to enable such person to adjust progressively to the changed circumstances as indicated in the preamble of the Rules of Indian States Abolition of Privileges Act, 1972, by which section 5(1)(iii) of the said Act was amended.

9.1 The grant of exemption to the palace from inclusion in the net wealth of the assessee, was not on the ground that it was some antique object but was

intended was to ensure that one building in the occupation of the recognised Ex-Ruler or the recognised successor of such ex-Ruler should be exempted from wealth tax. It cannot be countenanced that the recognised Ruler or the recognised successor should be compelled to live in a dilapidated building declared as his official residence and would lose the benefit of exemption under section 5(1)(iii) of the said act, if by re-constructing the building he makes it habitable. Moreover, such building recognised as an official residence may be erased to ground due to natural calamity and it would lead to absurdity, if one has to construe the provision of section 5(1)(iii) so as to deny the benefit of the re-constructed building even in such cases.

9.2 This is also clear from the Report of the Select Committee to which the Bill to provide for the levy of wealth tax was referred (See the Gazette of India, Extra Ordinary Part II, Section 2, dated 17th August 1957 (No.25A). As per that report, new item (iii) was added in the Bill in clause 5 (1) and the Committee's opinion reflected therein is reproduced hereunder from para 16 of the Report :-

> "2. New item (iii) - The Committee are of opinion that having regard to the covenants and agreements entered into by the Government of India with the former Indian Rulers, one building in their occupation should be exempt from wealth tax."

9.3 It will, thus, be seen that the emphasis even at the time when this exemption clause was enacted in the Act of 1957 was to provide exemption for one building which was in the occupation of the Ruler. The definition of the word `Ruler' has undergone change as noted above, and the benefit under section 5(1)(iii) of the said Act, would now be available, only as a transitional measure, to the ex-Ruler or his successor, who may have been recognised by the President prior to the date of commencement of the Constitution (Twenty-sixty Amendment) Act, 1971, which came into force with effect from 28th December 1971.

10. The validity of the Constitution (Twenty-sixty Amendment) Act, 1971 was upheld by the Supreme Court in Raghunathrao Ganpatrao v. Union of India, reported in 1994 Supp. (1) SCC 191. It was observed in the majority judgement that, permanent retention of the privy purse and the privileges of rights would be incompatible with

the sovereign and republican form of Government. Such a retention will also be incompatible with the egalitarian form of our Constitution. The repudiation of the right to privy purse, privileges, dignities etc. by the deletion of Articles 291 and 362, insertion of Article 363-A and amendment clause (22) of Article 366 by which the recognition of the Rulers and payment of privy purse were withdrawn cannot be said to have offended Article 14 or 19(1)(f) of the Constitution. It was held that there was no legitimacy in the argument in favour of continuance of princely privileges.

11. In the present case, however, it has never been disputed so far that the assessee - Shri D.S.Virawala Suragwala Vadia was a recognised successor of the Ex-Ruler. Therefore, if the said assessee is a successor of the Ex-Ruler recognised by the President prior to the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, he was entitled to the benefit of section 5(1)(iii) of the said Act, by not including in the net wealth of the assessee the said building notwithstanding the fact that it was re-constructed after demolishing the dilapidated palace.

12. Since the question as to whether the exemption claimed under section 5(1)(iii) of the Act could have been made by the assessee in the return filed by him in the status of HUF has not been referred and does not arise from the order of the Tribunal, we refrain from giving any opinion on that aspect of the matter.

13. In view of the above discussion, we hold that the Tribunal was right in coming to the conclusion that exemption under section 5(1)(iii) of the Wealth Tax Act, 1957 was admissible even in respect of the new building constructed by the assessee in the place of the old recognised palace which was used as his official residence. The questions referred to us in both these references are accordingly answered in the affirmative in favour of the assessee and against the Revenue. Both the references stand disposed off accordingly with no orders as to costs.

APRIL 17, 2002 [R.K.ABICHANDANI, J.]

[KUNDAN SINGH, J.]

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